

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JAN 27 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of) WT DOCKET NO. 94-147
)
JAMES A. KAY, JR.)
)
Licensee of one hundred sixty four Part 90)
Licenses in the Los Angeles, California, Area)

To: Administrative Law Judge
Richard L. Sippel

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WIRELESS TELECOMMUNICATIONS BUREAU'S
OPPOSITION TO MOTION TO DISQUALIFY COUNSEL

1. On January 23, 1995, James A. Kay, Jr. ("Kay") filed a Motion to Disqualify counsel in this proceeding. The Wireless Telecommunications Bureau hereby opposes such relief. In support whereof, the following is shown.

2. Kay seeks to have the undersigned, Gary P. Schonman, Esq., and W. Riley Hollingsworth, Esq. removed as counsel in this case. In support of his claim that Mr. Schonman should be disqualified, Kay argues that Mr. Schonman is barred by § 5(b) of the Communications Act of 1934, as amended, from representing the Wireless Telecommunications Bureau in this proceeding because he is generally assigned to represent the Mass Media Bureau in adjudicatory proceedings. In support of his claim that Mr. Hollingsworth should be disqualified, Kay argues that as a potential witness, Mr. Hollingsworth is barred by rules of professional conduct from representing the Wireless Telecommunications Bureau.

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3. Kay's request should be denied. Section 5(b) of the Act, upon which Kay relies for the disqualification of Mr. Schonman, involves by its very title the "Organization and Functioning of the Commission." There is absolutely nothing in this section of the Act which even arguably prohibits the agency from assigning Mr. Schonman, for the purposes of this case, to assist the Wireless Telecommunications Bureau. Indeed, other Mass Media Bureau counsel served in a similar capacity when it assisted the Private Radio Bureau (predecessor of the Wireless Telecommunications Bureau) in PR Docket No. 93-231. The Mass Media Bureau is certainly not a party to this proceeding and Mr. Schonman's participation should not be construed as such. However, Mr. Schonman is serving on behalf of the Wireless Telecommunications Bureau in this proceeding and any suggestion that his participation is barred by §5(b) of the Act is unsupported and unjustified. In any event, Kay does not have any right or privilege to determine who will represent the Chief of the Wireless Telecommunications Bureau in this case; that is a matter within the discretion of the Chief, Wireless Telecommunications Bureau.

4. Kay's suggestion that Mr. Hollingsworth should be removed is equally incorrect. Kay has neither sought to depose Mr. Hollingsworth, nor subpoenaed him to testify. Indeed, the § 1.311(b)(2) of the Commission's Rules expressly prohibits Commission personnel from being questioned by deposition, except on special order of the Commission. See Scripps Howard Broadcasting Company, 9 FCC Rcd 4880 (1994). Furthermore, Kay has not shown that Mr. Hollingsworth's testimony is or would be even remotely relevant to any of the issues

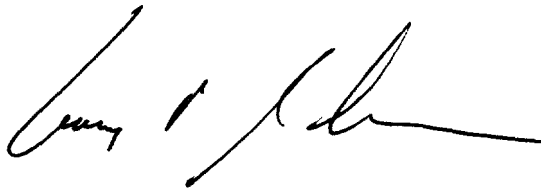
that have been specified. Consequently, there is no basis whatsoever for disqualifying Mr. Hollingsworth from serving as counsel in this adjudicatory proceeding.¹

6. Accordingly, Kay's Motion to Disqualify Counsel should be denied.

Respectfully submitted,
Regina M Keeney
Chief, Wireless Telecommunications Bureau



W. Riley Hollingsworth
Deputy Associate Bureau Chief



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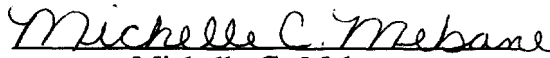
January 27, 1995

¹ Of course, it would be an abuse of process for Kay to manufacture conflicts for purposes of forcing out opposing counsel. See Kill Devil Hills Communications Limited Partnership, 5 FCC Rcd 6359, 6361 (Rev. Bd. 1990).

CERTIFICATE OF SERVICE

I, Michelle C. Mebane, a secretary in the Hearing Branch, Mass Media Bureau
certify that I have, on this 27th day of January 1995, sent by regular First Class United
States mail, copies of the foregoing "Wireless Telecommunications Bureau's Opposition to
Motion to Disqualify Counsel" to:

Dennis C. Brown, Esq.
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Michelle C. Mebane